



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. H. M. Hooper
County Attorney
Yoakum County
Plains, Texas

Opinion No. O-3673

Re: Where a complaint has been sworn
against a defendant for swindling with
worthless check, is the complainant
guilty of law violation if he accepts any
money in payment of the check from the
accused?

Dear Sir:

This is to acknowledge your letter of recent date
asking our opinion in answer to the above question.

In addition to Section 6 of Article 567b, Vernon's
Annotated Penal Code, cited by you, there is no penalty pro-
vided in the so-called "Hot Check Law," which could in any-
wise be applicable to the complainant. As you point out, be-
fore that section could be invoked, the complainant would
have to request the district or county attorney to dismiss
the case. This section has not been construed by our appel-
late courts as to constitutionality.

We direct your attention to the provisions of Arti-
cle 428 of the Penal Code, which reads as follows:

"Compounding a crime

"Whoever has knowledge that an offense against
the penal laws of this State has been committed,
and shall agree with the offender, directly or in-
directly, not to prosecute or inform on him in con-
sideration of money or other valuable thing paid,
delivered or promised to him by such offender, or
other person for him, shall be fined not less than
one hundred nor more than one thousand dollars."

To render one liable for the offense denounced by
Article 428, supra, there would have to be an agreement, ex-
pressly or impliedly made by and between the parties thereto,
that an anticipated or pending prosecution would be suppressed
or some effort made to effect a suppression thereof, by at
least one of them. It has been said that a conveyance of land
made with mere hope that it may avoid a prosecution for crime
or to mitigate punishment is insufficient to render the trans-
action illegal. See Ward v. Ward, (Tex.Civ.App., Writ dis-
missed) 68 S.W.(2d) 1071.

Hon. H. M. Hooper, page 2

We agree with your opinion, as expressed in your letter, that mere acceptance of part or all of the amount represented by a fraudulent check by the person defrauded constitutes no offense against the penal laws of this State.

APPROVED JUL 22, 1941
/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

By /s/ Benjamin Woodall
Benjamin Woodall, Assistant

BW:db:wb